

Message Text

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ACTION EB-08

INFO OCT-01 ARA-10 ISO-00 L-03 XMB-02 STRE-00 STR-07
EUR-12 EA-10 AID-05 COME-00 TRSE-00 CIAE-00
DODE-00 DOTE-00 FMC-01 INR-10 NSAE-00 CG-00
DLOS-09 OES-07 INRE-00 SSO-00 /085 W
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O R 121020Z JUN 78
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC IMMEDIATE 7841
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

C O N F I D E N T I A L SECTION 1 OF 2 BRASILIA 4576
FOR ARA-MR BUSHNELL; EB-MR. KATZ; L-MR HANSELL
EX-IMBANK-MR O'CONNOR

DEPARTMENT PASS MARITIME ADMINISTRATION-MR BLACKWELL
PASS STR ELECTRONICALLY FOR AMBASSADOR WOLFF

EO 11652 GDS
TAGS EWWR BR
SUBJECT: SEA-LAND IN BRAZIL-EMBASSY VIEWS

REFS: A. SAYRE-BUSHNELL TELECON, JUNE9; B. RUSER-MYLES TELECON,
JUNE 6; C. STATE 140906

1. EMBASSY IS GREATLY CONCERNED OVER THE EXIM BANK DECISION REPORTED
IN REF C. WHILE WE HAVE SUPPORTED SEA-LAND'S EFFORT TO ENTER THE
BRAZILIAN MARKET, WE HAVE SERIOUS RESERVATIONS THAT THE FACTS AND
LEGAL ASPECTS OF THIS CASE WARRANT RETALIATORY ACTIONS AGAINST BRAZIL

2. EFFORTS TO ASSIST SEA-LAND TO GAIN ACCESS TO THE BRAZILIAN MARKET
HAVE UNFORTUNATELY NOT BEEN SUCCESSFUL--EFFORTS WE HAVE STRONGLY
SUPPORTED CONSISTENT WITH A POLICY OF PROMOTING THE WIDEST POSSIBLE
MARKET ACCESS FOR US FIRMS IN BRAZIL. GIVEN THE GOB'S CONVICTION
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THAT ITS COURSE OF ACTION IS LEGALLY SOUND, WE CONSIDER IT UNLIKELY
THAT BRAZIL CAN BE PERSUADED TO CHANGE ITS WIDELY PUBLICIZED POSI-
TION, NOW TWICE REAFFIRMED BY A CABINET LEVEL INTERMINISTERIAL
COMMITTEE; AND BELIEVE THAT THE GOB WILL DIG IN EVEN MORE FIRMLY
IN RESPONSE TO WHAT IT PERCEIVES AS US PRESSURES. THE SEA-LAND
CASE WHICH HAS RECEIVED EXTENSIVE COVERAGE IN THE NATIONAL PRESS
IS CLOSELY WATCHED NOT ONLY BY THE SHIPPING INDUSTRY, WHICH IS

DIRECTLY AFFECTED, BUT ALSO--INCREASINGLY--BY OTHER SECTORS OF THE GOVERNMENT AND THE GENERAL PUBLIC. THE CASE, IN OTHER WORDS, IS RAPID

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LY BECOMING AN ISSUE OF NATIONAL PRESTIGE FOR THE GOB.

3. THUS, UNDER THE ASSUMPTIONS UNDER WHICH THE EXECUTIVE BRANCH SEEMS TO BE PROCEEDING, WE FACE THE PROSPECT OF A CYCLE OF US RETALIATORY ACTIONS AND BRAZILIAN COUNTER-ACTIONS WHICH--GIVEN BRAZIL'S PENCHANT FOR LINKAGES--IS BOUND TO HAVE ADVERSE REPERCUSSIONS ON US ECONOMIC AND COMMERCIAL INTERESTS IN BRAZIL AND, MORE BROADLY, US-BRAZILIAN RELATIONS.

4. THE REQUEST TO THE EXPORT-BANK TO DISCONTINUE THE FINANCIN OF THE COST OF FREIGHT OF EXIM-FINANCED EQUIPMENT IN BRAZILIAN BOTTOMS ILLUSTRATES THIS POINT. WE REGRET TO SAY THAT WE CONSIDER THIS MEASURE (ON WHICH WE WERE NOT CONSULTED AND OF WHICH WE WERE NOTIFIED ON THE EVE OF THE AMBASSADOR'S PRESENTATION OF CREDENTIALS) ENTIRELY INEFFECTIVE. SINCE BRAZIL IS NOT IN FACT DEPENDENT ON EXIM BANK FINANCING, THIS MEASURE WILL SIMPLY REDUCE THE COMPETITIVENESS OF US EXPORTS TO BRAZIL AND SHIFT EXPORT BUSINESS TOWARD EUROPE AND JAPAN, THUS ADVERSELY AFFECTING US RATHER THAN BRAZILIAN INTERESTS. BEYOND POSSIBLY IRRITATING THE BRAZILIAN AUTHORITIES, IT WILL, WE SUSPECT, ACCOMPLISH LITTLE.

5. EMBASSY BELIEVES THAT THE DEPARTMENT, THE MARITIME ADMINISTRATION, AND OTHER WASHINGTON AGENCIES WILL WISH TO EXAMINE WHETHER SEA-LAND HAS IN FACT A SUFFICIENTLY STRONG AND PERSUASIVE LEGAL CASE TO
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ARRANT US RETALIATORY ACTIONS AGAINST BRAZIL, NOTWITHSTANDING THE FACT THAT THESE MEASURES MAY BE INEFFECTIVE AND ADVERSELY AFFECT OTHER US (NOTABLY ECONOMIC) INTERESTS. HAVING EXAMINED THIS ISSUE ONCE AGAIN, THIS MISSION QUESTIONS WHETHER SEA-LAND'S LEGAL CASE IS VERY STRONG:

(A) BRAZIL, AS A SOVEREIGN COUNTRY, CLEARLY HAS THE RIGHT TO SET REASONABLE STANDARDS FOR CONTAINERIZATION AS LONG AS THESE DO NOT VIOLATE ITS INTERNATIONAL OBLIGATIONS AND COMMITMENTS. MANY OTHER COUNTRIES DO SO, INCLUDING THE UNITED STATES, ALTHOUGH THE US HAS CHOSEN NOT TO PRESCRIBE CONTAINER SIZES.

(B) BRAZIL'S LEGISLATION, ALTHOUGH IT WAS CLEARLY TRIGGERED BY SEA-LAND'S EFFORT TO ENTER THE BRAZILIAN MARKET, IS NON-DISCRIMINATORY, I.E., IT APPLIES EQUALLY TO ALL COMPANIES WANTING TO ENGAGE IN THE CONTAINER BUSINESS IN BRAZIL. ALL OTHER COMPANIES CONFORM TO THE STANDARDS FOR CONTAINER SIZES PRESCRIBED BY THE LEGISLATION.

(C) REGARDLESS OF VIEW IS ULTIMATELY CORRECT ON THE

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C O N F I D E N T I A L SECTION 2 OF 2 BRASILIA 4576

TECHNICAL FEASIBILITY OF INTERCHANGEABILITY, IT SEEMS TO US REASON-
ABLE THAT THE GOB, CONCERNED OVER AN INEFFICIENT HIGH COST INFRA-
STRUCTURE IN ITS PORT AND TRANSPORTATION SECTOR, WOULD PREFER SOME
STANDARDIZATION OF CONTAINER SIZES.

(D) THE STANDARDS ADOPTED BY THE BOG IN ITS LEGISLATION --WHICH
SEA-LAND ARGUES TO BE DISCRIMINATORY--ARE THOSE RECOMMENDED BY AN
INTERNATIONAL BODY, EVEN THOUGH NOT BINDING. US REPRESENTATIVES,
AS WE UNDERSTAND IT, PARTICIPATED IN THE DEVELOPMENT OF THESE STAND-
ARDS AND THE US IS IN GENERAL SUPPORT OF THE WORK OF THIS COMMITTEE
(THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION-ISO).

(E) SEA-LAND'S ARGUMENT ON RECIPROCITY SEEMS TO REST, IN PART, ON
ITS OWN READING OF BRAZILIAN LAW. WE FIND THE REASONING ARGUABLE
AND INCONCLUSIVE; AS WITH REGARD TO THE CHARGE OF DISCRIMINATION,
IT SEEMS TO US, SEA-LAND SHOULD BE WILLING TO TEST THIS THESIS
BY HAVING RECOURSE TO BRAZILIAN AND US COURTS.

6. EMBASSY, IN OFFERING THESE OBSERVATIONS, IS CONSCIOUS OF THE
MARITIME ADMINISTRATION'S STATUTORY RESPONSIBILITIES AND POWERS.
WHILE RECOGNIZING THESE, WE WOULD LIKE TO NOTE THAT A US AGENCY
FREQUENTLY HAS THE STATUTORY AUTHORITY TO TAKE CERTAIN ACTIONS,
BUT WHERE, AFTER WEIGHING OTHER US ECONOMIC AND POLITICAL INTERESTS,
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THESE POWERS ARE NOT EXERCIZED. WE BELIEVE THE DEPARTMENT AND THE
MARITIME ADMINISTRATION WILL WISH TO WEIGH BROADER US INTERES AND
CONCERNS IN BRAZIL IN THE PRESENT CASE.

7. DURING RECENT ALL BY AMBASSADOR, MINISTER PROENCA ROSA (CHIEF, FOREIGN MINISTRY'S ECONOMIC DEPARTMENT) TOOK OCCASION TO NOTE THAT IN THE TRADE SECTOR US-BRAZILIAN NEGOTIATIONS WERE PROGRESSING WELL AND THAT HE WAS OPTIMISTIC AND US-BRAZILIAN DIFFERENCES WOULD BE RESOLVED. SEA-LAND, HOWEVER, PRESENTED A DIFFERENT PROBLEM. PROENCA ROSA STRESSED THAT BRAZIL'S LAW WAS NON-DISCRIMINATORY, AND THAT SEA-LAND WAS ELIGIBLE, UNDER THE LAW, TO ENTER THE BRAZILIAN MARKET WITH 40-FEET CONTAINERS, THUS MEETING ISO STANDARDS. THE DECISION NOT TO PERMIT SEA-LAND TO ENTER THE BRAZILIAN MARKET WITH ITS ODD-SIZED CONTAINERS HAD BEEN MADE AT THE MOST SENIOR LEVELS OF THE GOB, AND WAS BASED ON A CONSCIENTIOUS REVIEW OF THE CASE. THE BRAZILIAN GOVERNMENT, PROENCA ROSA STRESSED, WAS NOT REALLY CONCERNED ABOUT SEA-LAND'S POTENTIAL MARKET SHARE, SINCE UNDER THE POOLING ARRANGEMENT WHATEVER SEA-LAND TOOK WOULD COME OUT OF THE MARKET SHARE OF US (READ: MOORE-MCCORMACK) COMPANIES. BRAZIL SHOULD NOT BE THE OBJECT OF US RETALIATORY ACTION FOR WHAT WAS REALLY AN ISSUE OF MARKET SHARES AMONG US COMPANIES.

8. COMMENT: IN HIS REMARKS TO THE AMBASSADOR, PROENCA ROSA APPARENTLY INTENDED TO ADDRESS THE OTHER DIMENSION OF THE ISSUE, I.E., SEA-LAND'S ATTEMPT TO ENTER THE BRAZILIAN MARKET WITH ITS 35-FEET CONTAINERS THROUGH TRANSSHIPMENTS VIA PUERTO RICO, THUS BY-PASSING THE POOLING ARRANGEMENT AND INVADING THE 40 PERCENT SHARE OF US-BRAZILIAN TRADE RESERVED TO BRAZILIAN LINES UNDER THE POOL; AND THE BRAZILIAN COUNTER-MOVE, BANNING SUCH TRANS-SHIPMENTS VIA SEA-LAND'S FACILITIES IN PUERTO RICO, WHICH IS BOTH OUTSIDE THE POOL AND NOT INCLUDED UNDER THE BILATERAL EQUAL ACCESS AGREEMENT. THE BRAZILIANS HAVE STRESSED THAT SEA-LAND WOULD BE ABLE TO TRANS-SHIP VIA PUERTO RICO, WITH ISO STANDARD CONTAINERS, IF PUERTO RICO
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IS BROUGHT INTO THE POOLS. IN VIEW OF PROENCA ROSA'S REMARKS, IT IS CONCEIVABLE THAT THE ISO STANDARD CONTAINER ISSUE IS SECONDARY FOR THE GOB TO THE ISSUE OF BRINGING PUERTO RICO UNDER THE POOL AND THAT AN EXPANSION OF THE POOL TO COVER PUERTO RICO IS ONE OF THE OBJECTIVES OR PREREQUISITES OF THE GOB IF SEA-LAND IS ALLOWED TO ENTER THE US-BRAZILIAN TRADE. THE MISSION IS NOT CLEAR WHETHER THIS HYPOTHESIS OF A POSSIBLE TRADE-OFF BETWEEN THESE TWO ISSUES--CONTAINER SIZE AND PUERTO RICO--HAS BEEN EXAMINED BY WASHINGTON AND, IF SO, WHETHER IT WOULD BE WORTH PURSUING OR HAS EVER BEEN EXPLORED WITH THE BRAZILIANS.

9. ACTION REQUESTED: EMBASSY WOULD APPRECIATE A CAREFUL ASSESSMENT AND REVIEW OF THE SEA-LAND CASE, TAKING INTO CONSIDERATION BROAD US INTERESTS. PENDING THE COMPLETION OF THIS REVIEW, THE EMBASSY RECOMMENDS THAT ANY FURTHER ACTION ON THE EXIM BANK MEASURE BE SUSPENDED AND, UNLESS INSTRUCTED OTHERWISE, EMBASSY WOULD PLAN TO DEFER NOTIFYING THE GOB OF THIS MEASURE.

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